

10269

BATTLE, FOWLER, JAFFIN, PIERCE & KHEEL

280 PARK AVENUE

NEW YORK, N. Y. 10017

HYMAN L. BATTLE, JR.  
CHARLES BURTON  
CARL B. CORDES  
MARTIN L. EDELMAN  
GERALD J. FIELDS  
DAVID FLEISCHER  
ROBERT W. GELFMAN  
THOMAS V. GLYNN  
DAVID D. GRIFFIN  
CHARLES L. JAFFIN  
MICHAEL B. JEFFERS  
THEODORE W. KHEEL  
THOMAS E. KRUGER  
JONATHAN M. LEHR  
DONALD C. MOSS  
LEONARD R. OLSEN, JR.  
EDWARD L. PECK  
SAMUEL R. PIERCE, JR.  
STEVEN A. SAIDE  
MICHAEL J. SALTZER  
PETER G. SCHMIDT  
ERIC W. SHAW

(212) 949-8300

WRITER'S DIRECT DIAL NUMBER

(212) 949-8252

GEORGE GORDON BATTLE  
(1897-1949)

LUDLOW S. FOWLER  
(1924-1961)

HERRICK K. LIDSTONE  
COUNSEL

CABLE ADDRESS  
COUNSELLOR

TELEX 127053

TELECOPIER (212) 986-5135

RECORDATION NO. 10269 Filed 1425

April 9, 1979

APR 9 1979 - 12 55 PM

9-099A030  
Date APR 09 1979

Fee \$ 160.00

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10269 Filed 1425

ICC Washington, D. C.

Secretary of the Interstate  
Commerce Commission  
Washington, D.C.

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10269 Filed 1425

RECORDATION NO. 10269 Filed 1425  
APR 9 1979 - 12 55 PM

Re: Box Cars Nos. 4000-4049

APR 9 1979 - 12 55 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation in the order listed below pursuant to 49 U.S.C. 11303 please find the original and three counterparts of each of the following documents:

1. Letter (Purchase Order Assignment) dated as of April 6, 1979, from Rex Railways, Inc., a Delaware corporation (Rex) to McDonnell Douglas Finance Corporation (MDFC), pursuant to which Rex assigns to MDFC certain rights under a purchase order with Pullman Standard Division of Pullman, Incorporated relating to the captioned Box Cars.

2. Lease Agreement (Lease Agreement) dated as of October 12, 1978, between Rex as lessor, and the Lamoille Valley Railroad Company, the railroad which will lease the Box Cars (Lessee).

3. Assignment of Lease (Lease Assignment) dated as of April 6, 1979, from Rex to MDFC, pursuant to which Rex assigns to MDFC all the lessor's rights under the Lease Agreement, together with the Lessee's acknowledgement thereof.

4. Management Agreement (Management Agreement) dated as of April 6, 1979, between Rex and MDFC, pursuant to which Rex is retained by MDFC as its agent to perform certain management and administrative services, with respect to the captioned Box Cars.

APR 9 12 45 PM '79

RECEIVED

*Rodolfo Lemus*  
*encl. 4*

Secretary of the Interstate  
Commerce Commission

April 9, 1979

Also enclosed is a check for \$160.00 payable to Interstate Commerce Commission in payment of the fee for recording of the Lease Agreement (\$50.00), Purchase Order Assignment (\$50.00), Assignment of Lease (\$10.00) and Management Agreement (\$50.00).

The names and addresses of the parties to the enclosed Agreements are as follows:

Rex Railways, Inc.  
616 Palisade Avenue  
Englewood Cliffs, New Jersey 07632

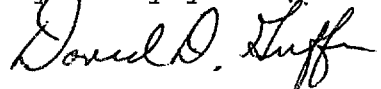
McDonnell Douglas Finance Corporation  
3855 Lakewood Boulevard  
Long Beach, California 90846

Lamoille Valley Railroad Company  
RFD #1  
Stafford Avenue  
Morrisville, New Jersey 05661

The equipment covered by the enclosed Agreements consists of 50 70-ton 50' 6" XM box cars, having A.A.R. mechanical designation "XM" and lessee identifying marks of LVRC 4000 through and including 4049. The cars will be further marked with a legend stating "Title to this Car Subject to Documents Recorded with the Interstate Commerce Commission."

Please return stamped copies of the enclosed documents to the undersigned.

Very truly yours,



David D. Griffin

DDG/ds  
Enclosures  
cc: Howard Meyers, Esq.

Rex Railways, Inc.  
616 Palisade Avenue  
Englewood Cliffs, NJ 07636

April 6, 1979

McDonnell Douglas Finance Corporation  
3855 Lakewood Boulevard  
Long Beach, California

10269

RECORDATION NO. .... Filed 1425

APR 9 1979 - 12 55 PM

Gentlemen:

INTERSTATE COMMERCE COMMISSION

Reference is made to that certain letter dated May 11, 1978, from PULLMAN STANDARD DIVISION of PULLMAN INCORPORATED (hereinafter "Builder") to REX RAILWAYS, INC. (hereinafter "Rex"), which letter has been acknowledged and accepted by Rex and Rex-Noreco, Inc., pursuant to which Builder offered five hundred (500) 70-ton, 50'6" Box Cars in accordance with Builder's bidding specification No. 3809 dated May 1, 1978 and to that mailgram dated June 6, 1978, pursuant to which Rex ordered an additional hundred (100) 70-ton, 50'6" Box Cars in accordance with the same specification No. 3809, dated May 1, 1978 and collectively with all documents referred to therein being hereinafter referred to as the "Purchase Order").

Reference is further made to the Lease Agreement dated as of October 12, 1978 ("Lease Agreement") between Rex, as lessor, and Lamoille Valley Railroad Corporation, a Vermont corporation ("Lessee"), which is being assigned by Rex to you, as assignee (hereinafter "Assignee") by a separate instrument of assignment, pursuant to which Lease Agreement the Units referred to below will be leased to the Lessee.

In connection with the arrangements made between Rex and Assignee relating to certain of the Box Cars covered by the Purchase Order, namely the 1st through and including the 50th Box Cars delivered thereunder and more fully described in Schedule I hereto (such 50 Box Cars or any any Cars which may be substituted therefor with the consent of the Assignee, hereinafter called the "Units"), it is hereby agreed as follows:

1. Rex hereby sells, assigns, transfers and sets over unto the Assignee all of Rex's right, title and interest in and to the Purchase Order, to the extent the same relate to the Units including without limitation, in such assignment (a) the right upon valid tender by the Builder to purchase the Units pursuant to the Purchase Order, and the right to take title to such Units and to be named the

RECEIVED  
APR 9 12 44 PM '79

purchaser in the bill of sale to be delivered by the Builder for such Units pursuant to the Purchase Order, (b) all claims for damages in respect of such Units arising as a result of any default by the Builder under the Purchase Order, and (c) any and all rights of Rex to compel performance of the terms of the Purchase order in respect of the Units. Nothing herein shall in any way limit or affect Rex's rights and interests under the Purchase Order relating to Box Cars other than the Units.

2. In consideration for Rex's assignment of the Units, but subject to the acceptance by the Lessee of the Units pursuant to the Lease, Assignee hereby assumes all of Rex's duties and obligations under the Purchase Order (but only as the same relate to the Units) including, without limitation, the obligation to pay to Builder the entire purchase price of the Units.

3. Anything herein contained to the contrary notwithstanding: (a) Rex shall at all times remain liable to the Builder under the Purchase Order to perform all the duties and obligations of the buyer thereunder to the same extent as if this Assignment had not been executed; and (b) the exercise by Assignee of any of the rights assigned hereunder shall not release Rex from any of its duties or obligations to the Builder under the Purchase Order except to the extent that such exercise by Assignee shall constitute performance of such duties and obligations.

Nothing contained herein shall subject the Builder to any liability to which it would not otherwise be subject under or pursuant to the Purchase Order or modify in any respect the Builder's contract rights thereunder or require the Builder to divest itself of title to or possession of the Units until payment therefor as provided therein.

4. On the date the Builder delivers the Units pursuant to the Purchase Order, the Assignee shall purchase the Units from the Builder and within fourteen days thereafter pay the Builder an amount equal to the purchase price payable to the Builder for the Units pursuant to the Purchase Order, as such purchase price may be adjusted in accordance with the terms of the Purchase Order and invoiced by the Builder to Assignee on the delivery date for the Units.

5. Rex agrees that at any time and from time to time, upon the written request of Assignee, Rex will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as

Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted.

5. Rex hereby represents and warrants that the Purchase Order is in full force and effect and is enforceable in accordance with its terms and Rex is not in default thereunder. Rex further represents and warrants that Rex has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the rights hereby assigned, to anyone other than Assignee.

6. Rex agrees that it will not enter into any agreement with the Builder which would amend, modify, supplement, rescind, cancel or terminate the Purchase Order in respect of the Units without the prior written consent of Assignee.

7. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

Witness:

MCDONNELL DOUGLAS FINANCE CORPORATION

By: Jerome Butkew  
Title: Eastern Regional Mgr.

REX RAILWAYS, INC.

Witness:

By: Robert M. Gruber, Pres.  
Title: \_\_\_\_\_

STATE OF NEW YORK )  
: SS:  
COUNTY OF NEW YORK)

On this 6th day of April, 1979, before me personally appeared Robert W. Gruber, to me personally known, who being by me duly sworn, says he is the President of Rex Railways, Inc., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

Martha J. Flanders  
(Title of Officer)

My commission expires

MARTHA J. FLANDERS  
Notary Public, State of New York  
No. 31-4678625  
Qualified in New York County  
Commission Expires March 30, 1980

STATE OF New York ,  
COUNTY OF New York ; SS:

On this 6th day of April, 1979, before me personally appeared Jerome Butkow, to me personally known, who being by me duly sworn, says that he is the authorized agent of McDonnell Douglas Finance Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

Martha J. Flanders  
(Title of Officer)

My commission expires

MARTHA J. FLANDERS  
Notary Public, State of New York  
No. 31-4678625  
Qualified in New York County  
Commission Expires March 30, 1980

# SCHEDULE 1

<u>Specifi- cations</u>	<u>Maximum Quantity</u>	<u>Lessee's Road Numbers (Both In- clusive)</u>
70-Ton, 50' 6" General Purpose Box Cars	50	LVRC 4000 - 4049

## Delivery

April 1  
through  
June 30, at  
Bessemer, Alabama

## Base Price/Unit

\$39,630

## Aggregate Base Price

\$1,981,500

## CONSENT AND AGREEMENT

The undersigned, Pullman Incorporated (Pullman Standard Division), (herein called "Builder"), hereby acknowledges notice of and consents to the foregoing Letter of Assignment (herein called the "Assignment," the defined terms therein being herein used with the same meanings) subject to all the terms and conditions thereof and hereby confirms to Assignee that:

1. All representations, warranties, indemnities (including without limitation patent indemnities) and agreements of Builder under the Purchase Order shall inure to the benefit of Assignee to the same extent as if originally names the buyer therein;

2. Builder has not and will not enter into or agree to any change order or any other amendment or supplement to or modification of the Purchase Order except as expressly set forth therein or permitted by the Assignment;

3. Upon delivery and acceptance of the Units, title thereto shall vest in Assignee and Builder will execute and deliver to Assignee a bill of sale in favor of the Assignee in a form reasonably satisfactory to Assignee, and furnish such other evidence of title vesting in the Assignee as may be reasonably required by Assignee;

4. All deliveries of Units shall be in the manner required by the provisions of the Purchase Order.

5. The Builder shall warrant that the Units at the date of delivery thereof were "new" within the meaning of Section 48 of the Internal Revenue Code of 1954, as amended to date, and had not been placed in service.

IN WITNESS WHEREOF, Builder has caused this Consent and Agreement to be executed and delivered by its duly authorized officer as of the date first set forth in the Assignment.

PULLMAN INCORPORATED  
(Pullman Standard Division)

By \_\_\_\_\_  
Vice-President-Freight Unit